

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ALFONSO ORDAZ,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

**Criminal Action No.
1:13-cr-00291-WSD-1**

**Civil Action No.
1:16-cv-01311-WSD**

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Alan J. Baverman's Final Report and Recommendation [183] ("R&R"), recommending that Movant Alfonso Ordaz's ("Movant") Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [178] ("Section 2255 Motion") be dismissed, and that a certificate of appealability be denied.¹

On October 31, 2014, Movant pled guilty to one count of conspiracy to possess with the intent to distribute a controlled substance. ([101] at 1-2; [132]). On January 12, 2015, the Court sentenced Movant to 135 months in prison, followed by five (5) years of supervised release. ([143] at 1; [145] at 1-3). On

¹ Citations to the record, in this Opinion and Order, refer to case number 1:13-cr-291-WSD-AJB-1.

January 13, 2015, Movant's counsel, W. Sander Callahan ("Callahan"), filed a Notice of Appeal [146]. Also that day, Callahan moved to withdraw as Movant's counsel because he was selected to serve as a federal administrative law judge beginning January 25, 2015. ([148]). Callahan asked the Court to appoint new counsel for Movant, and stated that Movant "ha[d] no objection to the appointment of new CJA counsel." ([148]). On January 21, 2016, the Court granted Callahan's motion to withdraw. ([155]). Amy Levin Weil ("Weil") was appointed to represent Movant on appeal. ([156]).

On June 11, 2015, Weil filed a 25-page appellate brief on Movant's behalf and, on August 5, 2015, she filed an 11-page reply brief. On October 30, 2015, the Court of Appeals for the Eleventh Circuit affirmed Movant's sentence, finding that the district court did not commit procedural error in varying upward from the sentencing guidelines range and that, even if it did, any error did not affect Movant's substantial rights or result in manifest injustice. ([176]). On April 18, 2016, Movant, proceeding *pro se*, filed his Section 2255 Motion, arguing that Callahan provided ineffective assistance by failing to file a notice of appeal after Movant was sentenced.

On May 13, 2016, the Magistrate Judge issued his R&R, recommending that Movant's Section 2255 Motion be dismissed because the record shows that

Callahan timely filed a notice of appeal. The Magistrate Judge found further that a certificate of appealability should be denied because it is not debatable that Movant's Section 2255 Motion requires dismissal. Movant has not filed objections to the R&R, and the Court finds no plain error in the Magistrate Judge's determinations. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984). Callahan filed a notice of appeal one day after Movant was sentenced, and Weil filed at least two appellate briefs on Movant's behalf. Movant's Section 2255 Motion is required to be dismissed.

For the foregoing reasons,

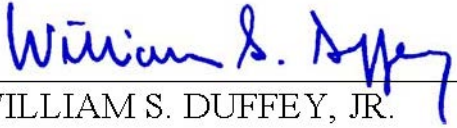
IT IS HEREBY ORDERED that Magistrate Judge Alan J. Baverman's Final Report and Recommendation [183] is **ADOPTED**.

IT IS FURTHER ORDERED that Movant Alfonso Ordaz's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [178] is **DISMISSED**.

IT IS FURTHER ORDERED that civil action number 1:16-cv-1311-WSD is **DISMISSED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

SO ORDERED this 3rd day of October, 2016.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE